IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

The High Court of Judicature for Rajasthan through its Registrar

Vs.

Ramavtar Khandelwal

D.B. Civil Special Appeal [Writ] No.565/92

DATE OF JUDGMENT : 25/07/2006

P R E S E N T

Hon'ble The Chief Justice Shri S.N. Jha
Hon'ble Shri Justice Ajay Rastogi

Shri R.K. Agarwal, for appellant
Shri R.D. Rastogi, for respondent

BY THE COURT [PER HON'BLE THE CHIEF JUSTICE] [ORAL]:

This special appeal by the High Court is directed against the order of learned Single Judge dated 3rd July, 1992 allowing the writ petition of the respondent with certain directions.

Respondent has filed writ petition, S.B. Civil Writ Petition No.873/90, for expunging adverse remarks in his Annual Performance Appraisal Report [APAR] for the year 1983 and a direction to promote him on the post of Civil Judge-cum- Additional Chief Judicial Magistrate from the date of promotion of his juniors. Learned Single Judge held that there was no material for recording the adverse

remarks and the Committee which considered the representation filed by the respondent for expunction of the remark should have given opportunity of hearing. Learned Single Judge also went into the correctness of remarks and observed that there being no material to sustain the same, recording adverse remarks was arbitrary. On these grounds the learned Judge quashed the remark. As regards second relief regarding promotion as Civil Judge -cum- ACJM, the learned Single Judge found that the promotion had been denied to the respondent and his juniors were promoted on 3.8.1989, whereas remarks were communicated later on 27.9.1989, on the basis of uncommunicated remarks, he could not have been denied promotion. Learned Single Judge, while quashing the adverse remarks and the communication about rejection of his representation dated 27.1.1990, directed the appellant to promote the respondent with effect from 3.8.1989 when his juniors were promoted.

At this stage, it may be mentioned that during pendency of this writ petition, the respondent applied for voluntary retirement which was allowed with effect from 14.7.2004. A question arose as to whether by reason of voluntary retirement of the respondent the dispute raised by him has not become infructuous?

Learned counsel for respondent took the stand that direction of the learned Single Judge to promote the respondent has not been carried out. Promotion, according

to the counsel, depends on the outcome of writ petition involving the correctness or otherwise of adverse entry and therefore, notwithstanding that the respondent has voluntarily retired the dispute still survives. Counsel accordingly made submissions on merits of the case.

Counsel reiterated the submissions urged before the learned Single Judge as noticed above. The thrust of the submissions was that there was no material available with the appellant on the basis of which impugned adverse remarks could be recorded. According to counsel, opportunity was not given to explain the remarks. Counsel further submitted that the delay in communication of adverse remarks after six years has caused prejudice as it deprived the respondent of his valuable right to make representation which is evident from the fact that the respondent was denied promotion on 3.8.1989 when his juniors were promoted. According to counsel, communication of remarks later on 27.9.1993 cannot be said to be proper compliance. In support of the submissions, counsel placed reliance on **State of Haryana Vs. P.C. Wadhwa [(1987) 2 SCC 602]** and **Major General I.P.S. Dewan Vs. Union of India, (1995) 3 SCC 383**.

The impugned remarks, at this stage, may be noticed as under :

> “Integrity highly doubtful. He is not fair and impartial in dealing with the public and the Bar. His public appearances at Weir were not

> condemnable. Relations with the Bar - not cordial. The Bar at Weir passed unanimous resolutions against his way or working and integrity. He indulged in cheap - politics at Weir. He was found quite indisciplined – insubordinate. He even could go to the extent of inciting his subordinate to rise in revolt against his/their officer. Integrity certificate for period from January, 1983 to July, 1983 was withheld."

In the course of hearing, Shri R.K. Agarwal learned counsel for the appellant, produced the service dossier of the respondent from which it appears that the allegations had been made against respondent during his posting at Weir. The complaint was inquired into by the District Judge, Shri A.A. Khan. His report was examined in Registry of the High Court and the following note was put up before the Chief Justice:

> "Extract copy of paras 5 to 10 along with orders dated 1.3.85 of Hon'ble the Chief Justice passed in R/Vig/213/83 & R/Vig/303/83.
>
> 5. Kindly peruse P.U.C. the Bar Association of Weir complained about the integrity, and conduct of the then M.J.M., Weir Mr. Ramavtar Khandelwal, transferred since long and the matter was inquired into by the District Judge, Bharatpur.
>
> 6. He examined as many as 17 witnesses including office bearers and members of the Bar.
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> 7. Because Mr. Khandelwal was transferred before practising lawyers of Weir were examined, so they were mostly indifferent.
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> 8. However, keeping in view statements of S/Shri Prasadilal, Manoharlal and Mohanlal besides Advocates S/Shri Preetamchand, Amarsingh, Dharampriya and Chandra Shekhar, as is supported by allegation of the complaint sent by the president of the Bar Association, Weir, it transpires that:

i. Shri Khandelwal did not enjoy absolute integrity at Weir, more particularly during the last period of 7 to 8 months preceding his transfer from weir; and

ii. he was in the close company of his A.P.P., officer Incharge of P.S. Weir and his own Reader Mr. Jagdish Prasad and a betal shop-keeper sitting at the Bus-stand.

9. Thus, while posted at Weir, Mr. Ramavtar Khandelwal did not enjoy integrity beyond doubt nor did he maintain conduct becoming of a reasonably good judicial officer.

10. Submitted W/Cs. for order, as deemed fit.

Sd/-
Amar Singh
26.2.85

Hon'ble C.J.

11. This file may be brought to my notice while writing A.C.R.

Sd/-
P.K. Banerjee
1.3.85

From the order of learned Single Judge it appears that the file containing the said report/notes of the Registry was produced before the learned Single Judge too but he did not place reliance observing that the ultimate order of the Chief Justice on the report was not shown to him. The observation is not understandable because the file did contain the minute of the Chief Justice – Shri Justice P.K. Banerjee – quoted above. In any view point for consideration on the submission of counsel for respondent was whether there was any material available on the record on the basis of which adverse remarks were recorded. From a bare reading of the aforequoted extract it is manifest that apart from independent witnesses,

advocates also supported the allegation in the complaint and that the respondent did not enjoy a good reputation at Weir particularly towards end of his tenure about 7-8 months prior to his transfer from Weir. He was in close company of the APP, Officer Incharge of the local Police Station and his own Reader Jagdish Prasad and a betal shop-owner at the Bus-Stand.

It is to be kept in mind while exercising power of judicial review under Article 226 of the Constitution of India this Court is not supposed to sit in appeal as an appellate authority nor supposed to go into the adequacy of materials which led to impugned decision/order. It is clear that materials were available on the basis of which adverse remark could be written. In **State of Madhya Pradesh Vs. Srikant Chaphekar, AIR 1993 SC 1221** = (1992) 4 SCC 689, a question arose about the jurisdiction of the Tribunal to set aside the remarks in the APAR. The Court observed as under:

> “The remarks in the annual confidential report are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal outstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Deputy Director. It is not the function of the Tribunal to assess the service report of a government servant and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendation based on such evaluation.”

In **Union of India Vs. E.G. Nambudiri, (1991) 3 SCC 38** it was held as under:

> “The decision, rejecting the representation does not adversely affect any vested right of the government servant nor does it visit him with any civil consequences”.

The Supreme Court also went into the question as to whether reasons should be disclosed while rejecting the representation and in this regard held that reasons need not be assigned in passing administrative orders unless rule so provides, and where the order is challenged, it is open to the authority to produce the record in court and substantiate its case.

Adverse remark per se does not mean much unless it results in adverse consequences and denial of some right or advantage which otherwise would have befallen on the person. While challenging denial of his right the person can assail the adverse remarks on some tenable ground, like non-communication thereof, but where adverse remarks are communicated and the representation against it is rejected, and an adverse decision is taken – where such decision is challenged, it is open for the authority to place materials before the court to support its decision. In that case the Court cannot sit in appeal. If the court is satisfied that there was some material available on the basis of which remark was recorded and representation was rejected, it should decline to interfere.

In State of Haryana Vs. P.C. Wadhwa [supra] and Major General I.P.S. Dewan Vs. Union of India [supra] the rules provided for communication of the adverse remarks within a certain period and therefore the decisions do not lend much help to the petitioner. The following observations in the latter case about recording of adverse remarks in stead of supporting the appellant's case, go against him:-

> "Indeed adverse remarks, as is well known, can be made by the appropriate superior officer on the basis of mere assessment of the performance of the officer and no enquiry or prior opportunity to represent need be provided before making such remarks – unless, of course, the Rules so provide. The remedy available to the officer in such a case is to make a representation against such remarks to the appropriate authority or to adopt such other remedies as are available to him in law."

It is true that remarks were communicated after a long delay. The remarks pertained to year 1983 and normally they should have been communicated soon after. The denial of promotion as ACJM in such circumstances on 3.8.89 on the basis of adverse remarks perhaps cannot be justified.

The question, however, is whether when there is no error in the decision rejecting his representation, the direction of the learned Single Judge to promote the respondent from 3.8.89 can be sustained. Question also arises as to whether under Article 226 of the Constitution the Court can issue a firm direction to

promote to the concerned person. It is true that in case of supersession promotion is normally to be made from the date when junior was promoted. But normally the Court issues direction to the authority to consider the case of the person concerned and not to promote him from a particular date.

Be that as it may, in the instant case, as stated above, the respondent sought voluntarily retirement and on his own request he retired with effect from 13.7.2004. Having voluntarily retired from service and severed relationship with the High Court, no direction can be issued at this stage to consider the case of respondent for promotion notwithstanding the rejection of his representation particularly when we find no ground to fault the adverse remarks and the order rejecting the representation. We are of the view that the learned Single Judge was not justified in issuing direction to promote the respondent from the date his juniors were promoted.

In the above premises, the impugned order of the learned Single Judge dated 3.7.1992 is set aside. The appeal is, accordingly, allowed. No order as to costs.

[AJAY RASTOGI],J. **[S.N. JHA],CJ.**

FRB